

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PATRICIA COPUS,

Plaintiff,

v.

TRAJAN A. PENN,

Defendant.

OPINION AND ORDER

13-cv-228-wmc

In this proposed civil action, plaintiff Patricia Copus alleges defendant Trajan A. Penn violated her constitutional rights and various criminal laws. Copus asks for leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915. From the financial affidavit Copus provided, the court concludes that she is unable to prepay any fee for filing this lawsuit. The next step is determining whether Copus's proposed action is (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Because Copus fails to state a claim on which relief may be granted, the court will deny her leave to proceed.

ALLEGATIONS OF FACT

In addressing any pro se litigant's complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this screening order, the court assumes these probative facts based on the allegations in her complaint.

Plaintiff Patricia Copus is a resident of Wisconsin. Defendant Trajan A. Penn is a co-owner of A-1 Sewer & Drain, with an address in Waukegan, Illinois. At some prior point, Penn resided in Milwaukee, Wisconsin. It appears from the complaint that Copus may have been in a relationship with Penn and perhaps has children with him.

Copus alleges in her complaint form for a civil action that Penn violated her “constitutional right to fair due process of law;” “rights to personal liberty and private property;” and “right to enjoy the equal rights, privileges and protections of personhood as established by law.” (Compl. Dkt. #1) p.2.) Copus also alleges that Penn did not allow her to “profit from my business” and that he kept money and property from her and her children. (*Id.*) For relief, Copus requests compensation for everything her children owned.

In addition to the civil lawsuit form, Copus also completed a criminal complaint, in which she alleges that Trajan Penn and Randall Penn (who appears to be Trajan’s father) violated 18 U.S.C. § 1201 (kidnapping), 18 U.S.C. § 2244 (abusive/sexual contact), 18 U.S.C. § 2243 (sexual abuse of a minor), 18 U.S.C. § 31 (embezzlement) and 26 U.S.C. § 7201 (tax evasion). In the offense description, Copus alleges that a “[c]hild was kidnapped from high street in [Riom Wisconsin.] [F]ather/ grandfather have cycle of sexual abuse and have continued it with this child.” (Compl. (dkt. #1-1) p.1.) Copus further alleges that “Father is a severe alcoholic, has fled police 2x in the past, [and] I have reason to believe he has made sexual contact in the past with other children. Cindy Martin (Trajan’s ex girlfriend from Milwaukee) warned Patricia Copus that [T]rajan was a sexual predator. Cindy also went on to say that he should never be

allowed around children.” (*Id.* at p.1.) Copus also completed a form for an arrest warrant for Trajan Penn.

OPINION

From the allegations in the complaint, disturbing as they are, this court cannot discern any claim on which Copus has a basis to proceed in federal court. To the extent Copus is alleging that Trajan Penn violated her constitutional rights, her only avenue for relief would be pursuant to 42 U.S.C. § 1983, which requires that the defendant be acting under color of state law. There is nothing in her complaint to indicate that Penn is employed by the state or a municipal government or acting under color of state law. To the contrary, Penn appears to be the owner of a private business.

Perhaps, Copus has a claim against Penn under state law for breach of contract or a tort claim, but from the complaint, the complaint would appear to belong to her children. Even if a claim existed, Copus and Penn would need to be citizens of different states and the amount in controversy would need to exceed \$75,000 in order for this court to have jurisdiction over such state law claim. 28 U.S.C. § 1332(a)(1). The allegations in the complaint are insufficient to determine (1) whether plaintiff is alleging a claim under state law and (2) whether Penn is a citizen of Illinois or Wisconsin; and (3) whether the amount in controversy exceeds \$75,000.

As for Copus’s proposed criminal action, private citizens are not entitled to an order requiring the arrest or prosecution of wrongdoers. *See Del Marcell v. Brown Cnty. Corp.*, 680 F.3d 887, 901-02 (7th Cir. 2012) (Easterbrook, C.J., concurring) (citations

omitted). The decision to charge an individual with criminal violations is not vested within the courts, but solely within the discretion of a prosecuting attorney. See *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) (“[A] private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.”); *Doyle v. Okla. Bar Ass’n*, 998 F.2d 1559, 1566-67 (10th Cir. 1993) (private citizen has no standing to have lawyer disciplined or criminally charged); *Sattler v. Johnson*, 857 F.2d 224, 227 (4th Cir. 1988) (neither member of public at large nor victim has right to have another criminally prosecuted). To the extent Copus has not done so, she should direct her concerns to the Milwaukee County District Attorney or such other law enforcement entity as may have the legal authority to pursue a criminal complaint.

ORDER

IT IS ORDERED that plaintiff Patricia Copus’s request for leave to proceed is DENIED, and plaintiff’s complaint is DISMISSED for failure to state a claim upon which relief may be granted.

Entered this 18th day of December, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge